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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/848,255	05/04/2001	Dennis Charles Clemes	032228.0006	6320

26118 7590 05/01/2003  
BROBECK, PHLEGER & HARRISON, LLP  
ATTN: INTELLECTUAL PROPERTY DEPARTMENT  
1333 H STREET, N.W. SUITE 800  
WASHINGTON, DC 20005

EXAMINER

BRUENJES, CHRISTOPHER P

ART UNIT

PAPER NUMBER

1772

DATE MAILED: 05/01/2003

6

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	09/848,255	CLEMES ET AL.
	Examiner Christopher P Bruenes	Art Unit 1772

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

1) Responsive to communication(s) filed on 10 February 2003.

2a) This action is FINAL. 2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

4) Claim(s) 1 is/are pending in the application.

4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5) Claim(s) \_\_\_\_\_ is/are allowed.

6) Claim(s) 1 is/are rejected.

7) Claim(s) \_\_\_\_\_ is/are objected to.

8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11) The proposed drawing correction filed on \_\_\_\_\_ is: a) approved b) disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12) The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All b) Some \* c) None of:

1. Certified copies of the priority documents have been received.

2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.

3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a) The translation of the foreign language provisional application has been received.

15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

1) Notice of References Cited (PTO-892)

2) Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_.

4) Interview Summary (PTO-413) Paper No(s) \_\_\_\_\_.

5) Notice of Informal Patent Application (PTO-152)

6) Other: \_\_\_\_\_

**DETAILED ACTION**

**REJECTIONS REPEATED**

1. The 35 U.S.C. 103 rejection of claim 1 over Razeto et al in view of Clemes is repeated for the reasons previously of record in Paper #3, Pages 2-4 Paragraph 1.

**ANSWERS TO APPLICANT'S ARGUMENTS**

2. Applicant's arguments filed in Paper #5 regarding the 35 U.S.C. 103 rejection of claim 1 over Razeto et al in view of Clemes have been fully considered but they are not persuasive.

In response to applicant's argument that Razeto in combination with claims do not meet every limitation, Razeto teaches as shown in Figures 2 and 4 that the outside sheets 18 and 16 comprise the two layered structure of Figure 4, in which 18 is a paper substrate represented by reference number 28 and a coating of polyethylene represented by reference number 30. Outside sheet 16 has the same structure only with a different paper substrate and the polyethylene coating faces the inside of the pocket as described in column 2 lines 58-65. One embodiment of Razeto describes impregnating the paper layer 18 with a reagent mixture that releases chlorine gas faster than the hypochlorite material in granulated or powder form found in the

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pocket (col.3, l.55-65). It would be obvious that when impregnating the paper layer, part of the mixture would be on the surface between the paper layer and polyethylene coating. Also, the impregnation of the paper layer with the gas releasing mixture and a coating of polyethylene has an equivalent function to a coating of a gas releasing mixture between the paper layer and a coating of polyethylene. Both function to release gas quickly in order to preserve fruits and vegetables before the slow diffusion of gas from the granulated material in the pocket formed by the two sheets heat sealed together. One of ordinary skill in the art would have recognized that taking a gas releasing mixture and coating it onto a paper layer or impregnating the paper layer serve the same function and determining which method of adding the mixture to the structure to use would be within the level of ordinary skill in the art, absent the showing of unexpected result.

### **Conclusion**

3. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Ide et al (USPN 5,711,211); Isaacs (USPN 6,033,705); Wellinghoff et al (USPN 6,046,243).

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4. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Christopher P Bruenjes whose telephone number is 703-305-3440. The examiner can normally be reached on Monday thru Friday from 8:00am-4:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Harold Pyon can be reached on 703-308-4251. The fax phone numbers for the organization where this application or proceeding is assigned

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are 703-872-9310 for regular communications and 703-872-9311 for  
After Final communications.

Any inquiry of a general nature or relating to the status  
of this application or proceeding should be directed to the  
receptionist whose telephone number is 703-308-0661.

Christopher P Bruenjes  
Examiner  
Art Unit 1772

CPB Chris Br →  
April 22, 2003

*Harold Pyon*  
HAROLD PYON  
SUPERVISORY PATENT EXAMINER  
1772 4/28/03